



**FEDERAL ELECTION COMMISSION**  
**Washington, DC 20463**

Stephen M. Ryan  
Matthew M. Leland  
McDermott Will & Emery LLP  
600 Thirteenth Street, NW  
Washington, DC 20005

**JUL 27 2010**

**RE: MUR 6215**  
**Tate Snyder Kimsey Architects, Ltd.**  
**J. Windom Kimsey**

**Dear Messrs. Ryan and Leland:**

On October 2, 2009, the Federal Election Commission (the "Commission") notified your above-referenced clients of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint as well as additional information supplied by the complainant, your response, and publicly available information, the Commission on July 14, 2010, found reason to believe that Tate Snyder Kimsey Architects, Ltd. violated 2 U.S.C. §§ 441b(a), 441f, and 441c, provisions of the Act, and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f), provisions of the Commission's implementing regulations. In addition, the Commission found reason to believe that J. Windom Kimsey violated 2 U.S.C. §§ 441b(a) and 441f, and 11 C.F.R. § 114.2(f). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,

  
Matthew S. Petersen  
Chairman

Enclosures  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**Respondents:** Tate Snyder Kimsey Architects Ltd.  
J. Windom Kimsey

**MUR: 6215**

**I. INTRODUCTION**

The Complaint in this matter alleges that Tate Snyder Kimsey Architects Ltd. ("TSKA") and J. Windom Kimsey violated provisions of the Federal Election Campaign Act, as amended ("Act"), in connection with a fundraiser held in honor of Senator Harry Reid held on February 17, 2009 ("Reid Fundraiser"). The Complainant, Randy L. Spitzmesser, a former employee and shareholder of TSKA, alleges that Windom Kimsey, a Principal of TSKA, illegally reimbursed him and other individuals for political contributions made to Friends for Harry Reid, the principal campaign committee for Senator Harry Reid ("Reid Committee"). The Complaint further alleges that Kimsey and another Principal organized this reimbursement scheme to influence Senator Reid in order to obtain a lucrative government contract with the General Services Administration ("GSA"), and that they used coercive tactics when soliciting contributions to the Reid Committee. Finally, the Complainant alleges that TSKA intentionally provided the Reid Committee with false contributor information, which appeared in reports filed with the Commission.

In its Response, TSKA admits to reimbursing two contributions, totaling \$1,500, made to the Reid Committee during the Reid Fundraiser in violation of 2 U.S.C. § 441f but contends that the majority of contributions made to the Reid Committee through this event were not reimbursed. The available information confirms this conclusion.

Documents attached to the Complaint, however, as well as addressed by TSKA in its response, reveal that TSKA, a Nevada corporation, apparently facilitated the making of

corporations by using corporate resources to hold the Reid Fundraiser in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f). Furthermore, the documents indicate that TSKA was in the process of negotiating contracts with the GSA when TSKA made contributions to the Reid Committee in violation of 2 U.S.C. § 441c.

Accordingly, the Commission finds reason to believe that TSKA and Kimsey violated 2 U.S.C. §§ 441b and 441f by making a contribution in the name of another with corporate funds, and 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f) by making a prohibited contribution or consenting to the making of such contribution, facilitating the making of a contribution, and soliciting contributions outside TSKA's restricted class. The Commission also finds reason to believe that TSKA violated 2 U.S.C. § 441c by making prohibited contributions as a government contractor.

## **II. FACTUAL BACKGROUND**

### **A. BACKGROUND ON TATE SNYDER KIMSEY ARCHITECTS, LTD.**

TSKA is an architectural design firm incorporated in the state of Nevada.<sup>1</sup> The firm was founded in 1960 and provides architectural services to local, state and federal agencies.<sup>2</sup> TSKA does not have a registered political committee with the Commission. J. Windom Kimsey is the President and Design Principal of TSKA,<sup>3</sup> and William J. Snyder is Chairman of the Board and is also a Principal of TSKA. From approximately July 31, 2000 until his termination from the

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<sup>1</sup> See Entity Details of TSKA filed with Nevada Secretary of State, available at <https://esos.state.nv.us>; Memorandum re: Investigation Summary, attached to TSKA Response, Jan. 6, 2010 ("TSKA Investigation Mem.") at 2.

<sup>2</sup> TSKA History, available at [www.tatsnyderkimsey.com](http://www.tatsnyderkimsey.com).

<sup>3</sup> TSKA Investigation Mem. at 6.

company on June 23, 2009, Complainant Randy L. Spitzmesser was a shareholder and was employed as a Principal and Project Manager of TSKA.<sup>4</sup>

One of TSKA's major clients is the General Services Administration ("GSA"), which handles acquisition and procurement for the federal government.<sup>5</sup> On September 16, 2008, TSKA was selected for an Indefinite Delivery Indefinite Quantity ("IDIQ") contract, pursuant to which the government will buy an "indefinite-quantity" of supplies or services during a specified period of time. *See* 11 C.F.R. § 16.504(a). The parties executed this contract on April 2, 2009, and it ultimately resulted in TSKA's award of an \$8.3 million GSA design contract on July 24, 2009, for the modernization of the Otay Mesa Land Port of Entry.<sup>6</sup>

#### **B. FEBRUARY 17, 2009 FUNDRAISER FOR FRIENDS FOR HARRY REID**

In December of 2008, Windom Kimsey attended a fundraising event for Senator Harry Reid with Robert Boyle, a Project Architect at TSKA.<sup>7</sup> After attending the event, Mr. Kimsey decided to hold a similar fundraiser for Senator Reid.<sup>8</sup> Mr. Kimsey and other TSKA staff then worked with staff from Senator Reid's local campaign office to hold the event.<sup>9</sup>

Mr. Kimsey instructed his assistant, Peggy Memering, who normally plans office parties and performs administrative tasks, to handle the logistics of the event and gave her a list of potential contributors for the event.<sup>10</sup> Ms. Memering appears to have spent a significant amount of time organizing the event by communicating with the Reid Committee staff, helping to

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<sup>4</sup> Complaint at 1; TSKA Investigation Mem. at 2;

<sup>5</sup> TSKA Investigation Mem. at 2.

<sup>6</sup> *See* TSKA Investigation Mem. at 2; TSKA GSA Negotiation/Contract Timelines, TSK000305.

<sup>7</sup> TSKA Investigation Mem. at 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 7.

produce the invitations, overseeing the guest list, arranging for a photographer, and working with the catering vendor, Wolfgang Puck Café in Las Vegas.<sup>11</sup> In particular, Ms. Memering communicated with Reid Committee staff to ensure that the Committee received all of the contributions, and on at least one occasion, mailed a contribution check to the Committee.<sup>12</sup> In certain communications, Reid Committee staff sought her assistance in collecting outstanding contributions and in compiling and updating the guest lists.<sup>13</sup> For example, Christopher Anderson, a staff member of the Reid Committee, wrote in an email to Ms. Memering, "Peggy, Here is the updated list of who attended and contributions. Please let us know what contributions we can still expect."<sup>14</sup> In response, Ms. Memering would send in an updated list.<sup>15</sup>

In addition, Mr. Kimsey asked Jane Michael, TSKA's marketing and graphic design specialist, to create invitations for the event. Ms. Michael spent approximately 18 hours working on the invitations in TSKA's Las Vegas Office, and TSKA paid her hourly wage of \$22.07 for the time she spent creating the invitations. TSKA reimbursed both Ms. Michael as well as Ms. Memering for costs relating to the production of the invitations,<sup>16</sup> but does not appear to have charged the Reid Committee for such costs or for Ms. Michael and Ms. Memering's time. Furthermore, although Mr. Kimsey notified Megan Jones, a Reid Committee staff member, that

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<sup>11</sup> *Id.*

<sup>12</sup> See Email from Peggy Memering to Christopher Anderson, March 31, 2009, TSK000388.

<sup>13</sup> See, e.g., Email exchanges re: Reid event, TSK000342, TSK000357, TSK000366, TSK000375.

<sup>14</sup> Email exchange between Peggy Memering and Christopher Anderson, Feb. 18, 2009, TSK000370.

<sup>15</sup> *Id.*

<sup>16</sup> See TSKA Investigation Mem. at 7, 8.

TSKA would be sending the invitations out during the week of January 19, 2009,<sup>17</sup> it does not appear that the Reid Committee sought to pay the costs for mailing the invitations.

Prior to the event, Ms. Jones sent Mr. Kimsey a draft invitation, which stated "Tate Snyder Kimsey Architects invite you to a luncheon honoring Senator Harry Reid" and a contribution form stating:

Federal law requires us to use our best efforts to collect and report the name and mailing address, occupation and name of employer of individuals who make contributions. Corporate contributions and contributions from non-U.S. citizens who are not lawfully admitted permanent residence [sic] are prohibited. All contributions by individuals must be made from personal funds and may not be reimbursed or paid by any other person."<sup>18</sup>

The final invitation prepared and distributed by TSKA included the same language.

Many of the individuals who received the invitations were not employees of TSKA,<sup>19</sup> and according to the Complaint, some of these individuals were consultants who were part of the design team for the Otay-Mesa Project. TSKA and Reid Committee staff exchanged numerous emails containing attachments where contributors were listed by name and employer.<sup>20</sup> In one email, dated February 10, 2009, Megan Jones of the Reid Committee specifically asked Ms. Memering to invite a particular individual who worked for an outside trade association. Jones asked:

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<sup>17</sup> See Email from Windom Kimsey to Megan Jones, Monday Jan. 19, 2009, TSK000349. In the email, Mr. Kimsey told Ms. Jones, "We have been talking to Wolfgang Puck at the Springs Preserve, which our firm designed. I will let you know if we can confirm lunch there, but I don't anticipate that to be a problem. As soon as that is done we will send you a copy of our invite and get those sent out this week. I can also copy you on our mailing list for the event. Enjoy the inauguration and stay warm." *Id.* In response, Ms. Jones replied, "Sounds good." *Id.*

<sup>18</sup> See Reid Committee Invitation, TSK 000335-336.

<sup>19</sup> See Guest List, TSK000002.

<sup>20</sup> See, e.g., Email from Peggy Memering to Megan Jones with attached guest list, Feb. 10, 2009, TSK000363-364; Email from Peggy Memering to Christopher Anderson with attached guest list, Feb. 26, 2009, TSK00384-385.

Peggy,

Would you mind sending me the guest list today at your convenience. I need to finalize Reid's trip memo today. Also, I'm assuming folks from the AIA [American Institute of Architects] board locally have been invited to attend? Randy Lavigne presented our campaign with PAC check a while back and we are checking in with the national AIA to see if they will provide the remaining PAC funds for this event. Additionally, we would love to have Randy attend if you all agree, since she was not able to personally present the check to Senator Reid the last time around.<sup>21</sup>

Later that day, Christopher Anderson sent another email to Mr. Kimsey requesting a copy of the guest list and stated:

Windom:

Pleasure to meet you. I spoke with the national AIA folks this morning, and they should be sending someone from the local office with a PAC check. They also want to help generate additional donors, if we can provide them with a list of who is already on board for the event. Would you send me that list when you get a chance.

Thanks,  
Chris<sup>22</sup>

On another occasion, the Reid Committee asked if Ms. Memering could determine whether employees of IBE Consulting, Inc. would be sending in personal checks after the Committee had received a corporate check from the corporation.<sup>23</sup> In an email, Christopher Anderson stated, "We have the IBE Consulting, Inc. check from John and Alan, but have not received their personal checks. If you talk to them re: their contribution, can you also ask what they would like me to do with the IBE check? I can void and return it to them or shred it."<sup>24</sup>

<sup>21</sup> Email exchange re: Reid event, TSK000342.

<sup>22</sup> Email from Christopher Anderson to Windom Kimsey, Feb. 10, 2009, TSK000357. The Commission's disclosure database does not indicate that AIA's PAC made a contribution through the Reid Fundraiser, but documents produced by TSKA show an AIA representative attended the event. See Guest List, TSK000002.

<sup>23</sup> See, e.g., Email Christopher Anderson to Peggy Memering, Feb. 24, 2009, TSK000380. .

<sup>24</sup> *Id.*



The catering costs for the fundraiser totaled \$1,615.39.<sup>25</sup> In email correspondence between Ms. Memering and the Reid Committee, the parties agreed that TSKA would directly pay the vendor and then the Reid Committee would send a reimbursement check.<sup>26</sup> The documents produced by TSKA reveal that TSKA paid for the catering costs,<sup>27</sup> and the Reid Committee subsequently reimbursed the company on February 24, 2009.<sup>28</sup> The Reid Fundraiser appears to have raised \$20,650. The total amount of contributions solicited outside the restricted class is approximately \$14,000.

### **C. ALLEGED COERCION AND REIMBURSEMENT SCHEME**

According to the Complaint, the principals of TSKA allegedly coerced and reimbursed employees and outside consultants for contributions made to the Reid Committee for the February 2009 fundraising event. Spitzmesser claims that he was terminated not due to a lack of work as documented but because he had disagreements with the management of the company and with the alleged illegal activity relating to campaign contributions raised for the February 2009 fundraiser.<sup>29</sup> He specifically alleges that a TSKA partner coerced him into making a contribution by stating “anyone who did not make a contribution will not have any work for the upcoming year.”<sup>30</sup> When Spitzmesser told certain TSKA partners that he could not afford to make a \$1,000 contribution, he claims that the partners arranged for him to obtain a

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<sup>25</sup> See Email to M. Jones re: EventCheckInvoice, Feb. 18, 2009, TSK000372-373.

<sup>26</sup> See Email from C. Andersen to P. Memering, Feb. 24, 2008, TSK000375-376.

<sup>27</sup> See Credit Card Statement and Invoice, TSK000205-213.

<sup>28</sup> See TSKA Investigation Mem. at 6 and Check No. 9770, attached as Exhibit C of TSKA Investigation Mem.

<sup>29</sup> Complaint at 1.

<sup>30</sup> Complaint at 1.

reimbursement.<sup>31</sup> Spitzmesser alleges that TSKA sought to "disguise" the reimbursement scheme by reimbursing him with a company check that was purportedly for business expenses but included an additional amount equal to his political contribution.<sup>32</sup> Specifically, Spitzmesser claims that while his business expense report totaled \$1,476.59, the actual check he received was for \$2,476.59.<sup>33</sup>

A Supplemental Complaint filed on November 15, 2009 ("Supp. Complaint") alleges that Ms. Memering had conversations with Mr. Kimsey about other TSKA employees receiving reimbursements for campaign contributions.<sup>34</sup> In addition, the Supplemental Complaint contends that Shelly Lyons, Business and Officer Manager of TSKA, prepared the reimbursement checks.<sup>35</sup>

In response, TSKA admits that it used corporate funds to reimburse the complainant, Spitzmesser, who made a \$1,000 contribution to the Reid Committee, as well as Christopher Fenton, a TSKA employee, who made a \$500 contribution to the Committee.<sup>36</sup> The TSKA response specifically states that before the Reid Fundraiser, Mr. Spitzmesser approached Mr. Kimsey about seeking a reimbursement for his \$1,000 contribution to the Reid Committee.<sup>37</sup> Mr. Kimsey agreed to reimburse him from TSKA's corporate account.<sup>38</sup> At Mr. Kimsey's request, Ms. Memering approached Mr. Fenton to ask whether he would contribute to the

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<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> Expense Report for Randy Spitzmesser, Feb. 5, 2008 and Check No. 3241, attached to Complaint.

<sup>34</sup> Supp. Complaint at 1.

<sup>35</sup> See *id.*

<sup>36</sup> TSKA Investigation Mem. at 5.

<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.*

fundraiser.<sup>39</sup> When Mr. Fenton expressed concern that he may not have adequate funds, Ms. Memering informed him that Mr. Kimsey would authorize a reimbursement to Mr. Fenton.<sup>40</sup> Ms. Lyons prepared the reimbursement checks for Messrs. Spitzmesser and Fenton at Mr. Kimsey's request.<sup>41</sup>

After the Complaint was filed in September 2009, Mr. Kimsey repaid Mr. Spitzmesser's \$1,000 reimbursement to TSKA with a personal check drawn from his personal bank account on October 23, 2009,<sup>42</sup> and Mr. Fenton repaid his \$500 reimbursement to TSKA with a personal check drawn from his account on October 25, 2009.<sup>43</sup>

The available information suggests that TSKA did not reimburse other alleged conduits for political contributions. Furthermore, despite facts suggesting that TSKA may have sought to disguise Spitzmesser's reimbursement by including the contribution reimbursement in his expense reimbursement check,<sup>44</sup> Fenton's expense report clearly itemizes the \$500 spent for the contribution to the Reid Committee.<sup>45</sup> In addition, in response to the coercion allegation, TSKA states "there was no evidence that individuals were coerced to contribute to Senator Reid's re-election campaign."<sup>46</sup>

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<sup>39</sup> *Id.* at 6-7.

<sup>40</sup> *Id.* at 7.

<sup>41</sup> *Id.* at 8.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> See Spitzmesser Expense Report, dated Feb. 5, 2008 (listing \$1,476.59 in expenses), and TSKA Check #3241, dated Feb. 17, 2009 (payment of \$2,476.59), both attached to Complaint.

<sup>45</sup> See Expense Report of Chris Fenton, TSK000165.

<sup>46</sup> TSKA Investigation Mem. at 4.

**E. ALLEGED FRAUDULENT DISCLOSURE OF CONTRIBUTOR INFORMATION**

The complaint alleges that contributor information about Mazie Pusich, a public defender in Reno, Nevada and wife of a TSKA employee, and Dwayne Miller, President of JBA Consulting Engineers, were intentionally falsely disclosed as employees of TSKA. Complaint at 2. The Complaint further alleges that this information was "possibly" provided to give the impression that TSKA could meet the fundraising goal of \$20,000 requested by the Reid Committee. *Id.* The available information suggests that neither of these individuals represented to the Reid Committee that they were employees of TSKA.

**III. LEGAL ANALYSIS**

**A. REIMBURSEMENT OF CONTRIBUTIONS WITH CORPORATE FUNDS**

A corporation is prohibited from making a contribution in connection with a federal election under the Act, and no officer or director of any corporation may consent to any contribution by the corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). The Act also prohibits a person from making a contribution in the name of another or knowingly permitting his or her name to be used to effect such a contribution. *See* 2 U.S.C. § 441f; 11 C.F.R. § 110.4. Commission regulations further provide that no person shall assist in making a contribution in the name of another. *See* 11 C.F.R. § 110.4(b)(iii).

Based on TSKA's admission that it reimbursed Messrs. Spitzmesser and Fenton for contributions that they made to the Reid Committee, TSKA made contributions in the names of others with prohibited, corporate funds. Furthermore, because Mr. Kimsey authorized the reimbursements, Mr. Kimsey is also liable for making contributions in the name of another and for consenting to the making of corporate contributions.

Documents produced by TSKA indicate that TSKA and Mr. Kimsey may have known that these reimbursements were impermissible. The draft invitation and donor card sent by the Reid Committee to Mr. Kimsey contained language explicitly stating that under federal law, corporate contributions were prohibited and that contributions must be made from personal funds. In addition, the final invitations and donor cards prepared by TSKA staff included the same language. Accordingly, TSKA and its staff had sufficient notice of the legal requirements for contributions to federal candidates. Moreover, Peggy Memering, in an email to Reid Committee staff, confirmed that she was aware that only personal, not corporate, contributions could be made for the fundraiser.<sup>47</sup>

Nonetheless, in response to the Complaint, TSKA and Mr. Kimsey provided extensive information as to the allegations in this matter, including information pertaining to additional violations and a comprehensive memorandum detailing the internal corporate investigation of the allegations. Accordingly, the Commission finds reason to believe that TSKA and Windom Kimsey violated 2 U.S.C. §§ 441b(a) and 441f.

#### **B. CORPORATE FACILITATION**

A corporation, including its officers, directors, or other representatives acting as agents of the corporation, may not facilitate the making of a contribution by using its corporate resources to engage in fundraising activities for any federal election. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(f)(1). The regulations provide examples of conduct that constitute corporate facilitation, which are discussed below. *See* 11 C.F.R. § 114.2(f)(2).

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<sup>47</sup> *See* Email Exchange re: Reid FR list, Feb. 17, 2009, TSK000368.

1. Ordering Subordinates to Plan Fundraising Project

Officials or employees of a corporation are prohibited from ordering or directing subordinates or support staff to plan, organize or carry out fundraising projects as part of their work responsibilities using corporate resources, without obtaining advance payment. 11 C.F.R. § 114.2(f)(2)(i)(A). When Mr. Kimsey asked his assistant, Peggy Memering, whose normal responsibilities included planning office parties, to handle the logistics of the Reid Fundraiser, without obtaining advance payment, such action constituted corporate facilitation. Similarly, by instructing Jane Michael, TSKA's marketing and design specialist, to create the invitations, Mr. Kimsey used TSKA's corporate resources for fundraising purposes.

2. Solicitations Not Within the Restricted Class

Corporations such as TSKA, which do not have separate segregated funds, are permitted to solicit contributions to be sent directly to candidates, but those solicitations are limited solely to its restricted class, consisting of its stockholders and executive or administrative personnel, and their families. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(j) and 114.2(f). Moreover, corporate facilitation may result if the corporation uses its list of customers, clients, vendors, or others, who are not within the restricted class, to solicit contributions or distribute invitations to fundraisers without advance payment for the fair market value of the list. See 11 C.F.R. § 114.2(f)(2)(i)(C).

According to the Responses, Mr. Kimsey personally solicited outside consultants for the Reid Fundraiser,<sup>48</sup> and he provided Ms. Memering with a list of potential contributors for the fundraising event.<sup>49</sup> Copies of the guest list provided by TSKA include numerous individuals,

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<sup>48</sup> See, e.g., Response of Dwayne Miller at 1; Response of Greg Gordon at 1, TSKA Investigation Mem. at 6.

<sup>49</sup> TSKA Investigation Mem. at 7.

who worked for outside firms, and thus were not in TSKA's restricted class.<sup>50</sup> The Reid Committee did not pay for use of TSKA's list. Thus, the available information indicates that TSKA and Windom Kimsey facilitated the making of contributions by using a list of individuals not within TSKA's restricted class to solicit contributions.

3. Providing Catering without Advance Payment

Under 11 C.F.R. § 114.2(f)(2)(i)(E), corporate facilitation includes "providing catering or other food services operated or obtained by the corporation or labor organization, unless the corporation or labor organization receives advance payment for the fair market value of the services." Because TSKA did not receive advance payment for the catering and Mr. Kimsey paid for the expenses himself, TSKA and Mr. Kimsey appear to have facilitated the making of a contribution.

4. Collecting and Forwarding Contributions

Commission regulations prohibit corporations from collecting and forwarding contributions. See 11 C.F.R. §§ 110.6(b)(2)(ii), 114.2(f)(2)(ii). Section 114.2(f)(2)(ii) provides that facilitation includes the providing of materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes or other similar items. *Id.* In addition, corporations are prohibited from acting as conduits for contributions earmarked to candidates or their authorized committees under 11 C.F.R. § 110.6(b)(2)(ii). *Id.*

According to documents produced by TSKA, TSKA collected and forwarded contributions on at least one occasion. On March 31, 2009, Ms. Memering sent the Reid Committee an email notifying it that she was putting a check from Alan Locke for \$1,000 in the

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<sup>50</sup> See, e.g., Guest List, TSK000002.

mail.<sup>51</sup> In an email dated March 13, 2009, Ms. Memering faxed a copy of a contribution form with the contributor's credit card number to the Reid Committee apparently because the Committee had not received a copy.<sup>52</sup> Ms. Memering further indicated that she would be looking into "the other missing donations,"<sup>53</sup> possibly suggesting that she may be sending other contributions to the Reid Committee that it may not have received. By collecting and forwarding one or more contributions designated for the Reid Committee, TSKA appears to have acted as a conduit and facilitated the making of contributions.

5. Alleged Coercion

Facilitation also includes using coercion to urge any individual to make a contribution or engage in fundraising on behalf of a candidate or political committee. 11 C.F.R.

§ 114.2(f)(2)(iv). In the Complaint, Spitzmesser provides specific information about coercive statements made by an unnamed partner of TSKA, and states that he agreed to make the \$1,000 contribution "out of fear of losing my job." Complaint at 1.

The Complaint does not identify the partner who allegedly made the coercive statements, and TSKA has largely denied that coercion took place. Other than the information provided by the complaint, TSKA's internal investigation concluded that no other individual has claimed that they were coerced into making a contribution. William Snyder, a possible unnamed partner who coerced Spitzmesser, has submitted a sworn declaration stating that he did not coerce Spitzmesser. We have received no such declaration from Mr. Kimsey, who could have made the alleged statements to Mr. Spitzmesser, and TSKA's response does not specifically address

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<sup>51</sup> See Email from Peggy Memering to Christopher Anderson, March 31, 2009, TSK000388.

<sup>52</sup> See Email from Peggy Memering to Christopher Anderson, March 13, 2009, TSK000386-387.

<sup>53</sup> *Id.*



whether Mr. Spitzmesser was coerced. Nevertheless, the Commission finds no basis to investigate whether Mr. Spitzmesser's contribution was coerced, as the information presented already appears to establish that his contribution was facilitated by other means.

6. Summary

The available information indicates that TSKA and Windom Kimsey, President of TSKA, used corporate resources to hold the Reid Fundraiser and improperly facilitated contributions in a number of ways as set forth in 11 C.F.R. § 114.2(f). Mr. Kimsey ordered subordinates to plan and organize the Reid Fundraiser, including producing and distributing the invitations to individuals outside the restricted class. TSKA also failed to obtain advance payment for catering costs and does not appear to have received any payment for staff time used to plan the fundraiser or costs relating to invitations. Furthermore, TSKA staff collected and forwarded contributions to the Reid Committee. Accordingly, the Commission finds reason to believe that TSKA and Windom Kimsey violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f).

C. **GOVERNMENT CONTRACTOR PROHIBITION**

2 U.S.C. § 441c(a) prohibits any person:

who enters into any contract with the United States of any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States . . . , if payment for the performance of such contract . . . is to be made in whole or in part from funds appropriated by the Congress at any time between the commencement of negotiations for the latter of (A) the completion of performance under; or (B) the termination of negotiations, for such contract . . . directly or indirectly to make any contribution of money or other things of value . . . ."

TSKA's Response states that it was selected for an IDIQ contract on September 16, 2008 and executed the contract on April 2, 2009. Thus, it appears that TSKA and GSA were apparently in negotiations when TSKA held the Reid Fundraiser in February 2009 and made

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**contributions to the Reid Committee. Accordingly, the Commission finds reason to believe that**  
**TSKA violated 2 U.S.C. § 441c.**